

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

VS.

AND

AND

Docket No. 175,062

## ORDER

**ON** the 20th day of September, 1994, the application of the respondent and insurance carrier for review by the Workers Compensation Appeals Board of an Award of Review & Modification entered by Administrative Law Judge Shannon S. Krysl, dated July 11, 1994, came on for oral argument.

## APPEARANCES

The claimant appeared by and through his attorney James Zongker of Wichita, Kansas. The respondent and its insurance carrier appeared by and through their attorney Frederick Haag of Wichita, Kansas. The Kansas Workers Compensation Fund appeared by and through its attorney Cortland Clotfelter of Wichita, Kansas. There were no other appearances.

## RECORD

The record consists of the documents filed of record with the Division of Workers Compensation in this docketed matter and the transcripts of hearings and the exhibits introduced therein as set forth in the Award of the Administrative Law Judge. In addition, the record forwarded to the Appeals Board includes the transcript of testimony and exhibits

from the deposition of Kenneth D. Zimmerman, M.D., taken June 27, 1994, and filed of record with the Division of Workers Compensation on July 12, 1994. In addition, the Appeals Board has received a copy of the letter dated July 18, 1994, from Administrative Law Judge Shannon S. Krysl to attorney Frederick Haag that was not contained in the official court file.

### **STIPULATIONS**

The stipulations of the parties are the same as those specifically set forth in the Award of the Administrative Law Judge. In addition, the parties stipulate that the deposition of Kenneth D. Zimmerman, M.D., was not available, nor considered by the Administrative Law Judge, for purposes of her Award despite its being taken on the last day of respondent's terminal date, June 27, 1994.

### **ISSUES**

The principal issue now before the Appeals Board is whether the deposition of Dr. Zimmerman should be included as part of the record for consideration of the issues arising from this proceeding.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the entire record, the Appeals Board finds, as follows:

(1) This proceeding should be remanded to the Administrative Law Judge for determination and order whether the transcript of deposition of Kenneth D. Zimmerman, M.D., taken on June 27, 1994, is to be included as part of the record in this proceeding. If so, the Administrative Law Judge is to determine the issues arising from this proceeding based upon the entire evidentiary record.

The respondent and insurance carrier deposed Boeing physician Kenneth D. Zimmerman, M.D., on the last day of their terminal date, June 27, 1994. The official Court file contains an order extending respondent's terminal date to June 27. The transcript of the deposition was filed with the Division of Workers Compensation on July 12, 1994. On July 8, 1994, the respondent and insurance carrier filed their submittal letter which omitted any mention that Dr. Zimmerman's deposition had been taken. Apparently, the Administrative Law Judge prepared and issued her decision without having received, nor the opportunity to review, Dr. Zimmerman's deposition.

The issue before the Appeals Board was whether the Administrative Law Judge erred in not considering the deposition in question. As that issue has not been addressed by the Administrative Law Judge, this proceeding should be remanded for that determination and order. Should it be determined that the transcript is properly included as part of the record, the Administrative Law Judge is directed to reconsider the issues arising from this proceeding giving Dr. Zimmerman's testimony whatever weight it may deserve.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that this proceeding be remanded to Administrative Law Judge Shannon S. Krysl for determination

of the issues as set forth above. The Appeals Board does not retain jurisdiction over this proceeding and the parties must comply with the pertinent law pertaining to review of the forthcoming decision of the Administrative Law Judge should any party be aggrieved.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September, 1994.

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BOARD MEMBER

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c: James Zongker, PO Box 47370, Wichita, KS 67201  
Frederick Haag, 700 Fourth Financial Center, Wichita, KS 67202  
Cortland Clotfelter, 727 N. Waco, Suite 585, Wichita, KS 67203  
Shannon S. Krysl, Administrative Law Judge  
George Gomez, Director